

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____))	
SUSAN and GILLES DEGRAVES,)	
)	
Plaintiff,)	
)	
v.)	
)	Civ. Action. No.
THE BANK OF NEW YORK MELLON fka THE)	
BANK OF NEW YORK AS TRUSTEE FOR THE)	
CERTIFICATEHOLDERS OF THE CWABS,)	
INC., ASSET-BACKED CERTIFICATES,)	
SERIES 2006-5, BANK OF AMERICA, MERS)	
(MORTGAGE ELECTRONIC RECORDING)	
SYSTEM), and DITECH fka GREEN TREE)	
SERVICING, ET AL.)	
)	
Defendants.)	
_____))	

NOTICE OF REMOVAL

TO: The Honorable Judges of the United States District Court for the District of
Massachusetts

Pursuant to 28 U.S.C. §§ 1441 *et seq.* Defendants Ditech Financial LLC (“Ditech”) f/k/a
Green Tree Servicing LLC (“Ditech”), Mortgage Electronic Registration Systems, Inc.,
 (“MERS”) and The Bank of New York Mellon f/k/a The Bank of New York As Trustee for The
Certificateholders of the CWABS, Inc. Asset-Backed Certificates Series 2006-5 (“BNY”)
remove the action captioned Susan and Gilles DeGraves v. The Bank of New York Mellon, et
al., now pending in the Massachusetts Superior Court, Hampden County, to the United States
District Court for the District of Massachusetts. In so doing, Ditech, MERS and BNY state the
following:

1. On or about March 17, 2016, Susan DeGrave and Gilles DeGraves (the “Plaintiffs”) filed a Complaint in Hampden County Superior Court against Ditech, BNY, MERS and Bank of America.

2. On or about March 17, 2016, Ditech received a copy of the Complaint and Plaintiff’s Request for Preliminary Injunction. A copy of the documents received by Ditech are attached as **Exhibit A**. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely as it is filed within thirty (30) days of Defendants’ receipt of the Complaint.

3. This Court has original subject matter jurisdiction over this action on the basis of 28 U.S.C. §§ 1331 and 1332.

4. First, there is complete diversity of citizenship between the Plaintiffs and the Defendants. Plaintiffs are citizens and residents of Massachusetts. Ditech is a foreign limited liability company. For diversity purposes, “citizenship of a limited liability company is determined by the citizenship of all of its members.” Pramco, LLC ex rel. CFSC Consortium, LLC v. San Juan Bay Marina, Inc., 435 F.3d 51, 54 (1st Cir. 2006). Here:

- The members of Ditech Financial LLC are Green Tree Licensing LLC, a Delaware limited liability company with its principal office in Minnesota and Green Tree Servicing Corp., a Delaware corporation with its principal office in Minnesota.
- The sole member of Green Tree Licensing LLC is Green Tree Investment Holdings II LLC, a Delaware limited liability company with its principal office located in Minnesota.
- The sole member of Green Tree Investment Holdings II LLC is Green Tree Credit Solutions LLC, a Delaware limited liability company with its principal office located in Minnesota.

- The sole member of Green Tree Credit Solutions LLC is Walter Investment Management Corp., a Maryland corporation with its principal office located in Florida.

5. The other Defendants are citizens of other states. Therefore, there is complete diversity. Specifically, BNY is a citizen of New York, MERS is a citizen of Delaware and Bank of American is a citizen of Delaware.

6. Second, the amount in controversy exceeds \$75,000. In the Complaint, Plaintiffs seek to rescind a loan in the amount of \$170,000 and invalidate the Mortgage. "In cases that seek equitable relief against foreclosure sales, the fair market value of the property . . . foreclosed upon is an acceptable measure of the amount in controversy for purposes of diversity jurisdiction." Morse v. Residential Credit Solutions, Inc., No. 11-12275, 2012 WL 458492, at *1 (D. Mass. Feb. 13, 2012) (Zobel, J.); see also Bedard v. Mortgage Elec. Registration Sys., Inc., No. 11-CV-117-JL, 2011 WL 1792738, at *2 (D.N.H. May 11, 2011) (LaPlante, J.) (collecting cases); Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."). The assessed value of the Property is currently \$161,100. A copy of the Town of East Longmeadow Assessing Department's Property Card is attached hereto as **Exhibit B**. The amount in controversy, therefore, exceeds \$75,000.

7. As a result, this Court has original subject matter jurisdiction over this action on the basis of 28 U.S.C. § 1332, as there is complete diversity of citizenship between Plaintiffs and Defendants and because the matter in controversy exceeds \$75,000.

8. In addition this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 in that the Plaintiffs have alleged violations of federal statutes including “Truth In Lending Act” and “RESPA¹.”

9. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being filed with the Massachusetts Superior Court.

10. Pursuant to Local Rule 81.1(c), within fourteen (14) days of filing this Notice of Removal, Defendants will file certified or attested copies of the state court record in this Court.

WHEREFORE, Ditech, MERS and BNY request that the above action now pending against it in the Massachusetts Superior Court, Hampden County, be removed therefrom to this Court.

¹ Although not defined, presumably this acronym is intended to reference the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et al.

DITECH FINANCIAL LLC,
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC, AND
THE BANK OF NEW YORK MELLON

By their attorneys,

/s/ Richard Briansky

Dated: March 28, 2016

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CERTIFICATE OF SERVICE

I, Richard Briansky, certify that on March 28, 2016, I served a copy of the foregoing document on counsel for all parties by delivering a copy of the same by overnight mail:

Susan and Giles DeGrave
360 Elm Street
East Longmeadow, Massachusetts

/s/ Richard Briansky

Richard Briansky